

Staff Summary Report



Council Meeting Date: 11/13/03

Agenda Item Number: 13a

SUBJECT: Authorize the Mayor to execute the Second Amendment to the Development Agreement between the City of Tempe, SunCor Development Company and the Autoplex Owners Association.

DOCUMENT NAME: 20031113cacc01 **PLANNED DEVELOPMENT PROJECTS (0406)**

SUPPORTING DOCS: Yes

COMMENTS: The Second Amendment to the Development Agreement acknowledges the assignment under the Development Agreement to the Autoplex Association and allows, in addition to landmark identification currently permitted in the Development Agreement, up to two additional landmark identification features.

PREPARED BY: Marlene A. Pontrelli, City Attorney (350-8120)

REVIEWED BY: Jan Schaefer, Economic Development Manager (350-8036)

LEGAL REVIEW BY: N/A

FISCAL NOTE:

RECOMMENDATION: Authorize the Mayor to execute the Second Amendment to the Development Agreement.

ADDITIONAL INFO:

**SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT**
[Tempe Autoplex]

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT ("Second Amendment") is made and entered into as of the ____ day of _____, 2003, by and between the CITY OF TEMPE, an Arizona municipal corporation (the "City"), SUNCOR DEVELOPMENT COMPANY, an Arizona corporation ("Developer"), and the AUTOPLEX OWNERS ASSOCIATION, an Arizona nonprofit corporation (the "Autoplex Association").

R E C I T A L S

A. The City and Developer entered into that Development Agreement dated as of February 17, 1989 (the "Development Agreement"), which was amended by the Amendment to Development Agreement dated July 13, 1989, the Addendum No. 1 to Development Agreement dated April 13, 1993, and Addendum No. 2 to Development Agreement dated December 19, 1996, pursuant to which the City and Developer reached certain understandings and agreements with respect to the annexation and development of that real property more particularly described in the Development Agreement.

B. The Developer is currently in escrow to sell the final parcel of the Project to an automobile dealer and, in connection therewith, desires to assign to the Autoplex Association all further rights and any continuing obligations which may arise or exist under the Development Agreement with respect to the Project. In connection therewith, the parties hereto have agreed to enter into this Second Amendment pursuant to which the rights and any continuing obligations of the Developer under the Development Agreement shall be assigned to and assumed by the Autoplex Association, and to make certain other amendments to the Development Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

A G R E E M E N T

Definitions. All initial capitalized terms used herein shall have the meanings ascribed thereto in the Development Agreement, unless otherwise specifically defined herein.

Assignment by Developer. The parties hereto acknowledge that, concurrently with the execution of this Second Amendment and, effective as of the date of this Second Amendment, all further rights, continuing obligations and duties, if any, of the Developer under the Development Agreement shall be deemed to be assigned to and assumed by the Autoplex Association, and Developer shall have no further rights, duties or obligations under the Development Agreement. From and after the date of this Second Amendment, all references in the Development Agreement to the term "Developer" shall be deemed to mean and refer to the Autoplex Association.

Secondary Landmark Identification Features. The parties hereto acknowledge and agree that, in addition to the landmark identification feature described in Section 1.3(c)(2) of the Development Agreement, up to two (2) additional landmark identification features shall be permitted to be erected in

connection with the Project, one such feature to be located on both sides of the entrance to the Project located at the intersection of Elliot Road and Autoplex Loop, and one such feature to be located on both sides of the entrance to the Project located at the intersection of Priest Drive and Auto Drive (the "Secondary Landmark Identification Features"). The Secondary Landmark Identification Features shall be subject to the following restrictions and limitations:

(a) The Secondary Landmark Identification Features shall not be of a height greater than thirty-five feet (35') above grade without the prior written consent of the City;

(b) Each additional Secondary Landmark Identification Features shall not contain a surface area for signage copy greater than one hundred twenty (120) square feet; and

(c) The specific location(s) and design(s) of the Secondary Landmark Identification Features shall be subject to the review and approval of the City pursuant to the provisions of Section 1.3(c)(2) of the Development Agreement. A conceptual drawing of the Secondary Landmark Identification Features is attached hereto as Exhibit A.

The parties hereby acknowledge that individual-user logos and name identification will be permitted on the Secondary Landmark Identification Features notwithstanding anything contained in Section 1.3 of the Development Agreement to the contrary.

No Further Modifications. Except as specifically modified or amended herein, the terms and conditions of the Development Agreement shall remain in full force and effect, unchanged and unmodified in any way, and are hereby ratified and affirmed by the parties. The parties hereto acknowledge and agree that, as of the date of this Second Amendment, (a) the Development Agreement is in full force and effect, (b) all duties and obligations of the parties to the Development Agreement required to be observed or performed prior to the date of this Second Amendment have been performed, and (c) there are no defaults currently existing thereunder.

Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Development Agreement as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

City Clerk

By _____
Name _____
Title _____

APPROVED AS TO FORM:

City Attorney

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation

By _____
Name _____
Title _____

AUTOPLEX OWNERS ASSOCIATION,
an Arizona nonprofit corporation

By _____
Name _____
Title _____

